REMARKS

After entry of this response, claims 1-23 remain pending in the present application. Applicant respectfully requests reconsideration by the Examiner in light of the following remarks.

I. Rejection under 35 USC § 112

Claims 1-9, 11-12, 14-15, 17 and 19 are rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite.

In regards to claims 2 and 11, it is asserted that the recitation of "performed" needs to have an active voice to positively recite a step;

In regards to claims 3, 6, and 19, it is asserted that the recitation of "determined" needs to have an active voice to positively recite a step;

In regards to claims 5, 8, 14, and 17, it is asserted that the recitation of "disposed" needs to have an active voice to positively recite a step; and

In regards to claims 12 and 15, it is asserted that the recitation of "determined . . . derived" needs to have an active voice to positively recite a step.

Applicant has amended the aforementioned claims as set forth in the amended claims set above. Accordingly, Applicant respectfully requests withdrawal of the rejection under 35 U.S.C. § 112, second paragraph, of claims1-9, 11-12, 14-15, 17 and 19.

II. Rejection under 35 USC § 103

Claims 1-23are rejected under 35 USC 103(a) as being unpatentable over Deno et al. (US 2003/0074029, hereinafter "Deno") in view of Bennett et al. (U.S. 5,231,098, hereinafter "Bennett"). Applicant respectfully traverses the rejection.

The pending claims recite determining an optimal ESI that corresponds to a maximal product of RF and PR. Contrary to the assertion in the Office Action, none of the references, alone or in combination, teach or suggest determining an optimal ESI that corresponds to a maximal product of RF and PR. While it is true that Deno discloses determining a recirculation fraction (RF), the reference is silent on the determination of a potentiation ratio (PR). As such, it is unreasonable to interpret Deno to teach or suggest determining a product of a (non existent) potentiation ratio and a recirculation fraction.

Further, the Office Action seemingly acknowledges Deno's deficiency in determining a product of RF and PR and cites Bennett's disclosure pertaining to control of PESP stimulation based on CSI and CPI. However, the assertion that Bennett teaches utilizing a product of the CSI and CPI variables is simply untrue. Bennett simply does not disclose computing a product of the CSI and CPI variables and it certainly does not disclose using such a product to control PESP stimulation. For example, Bennett discloses that:

> [t]he intended implementation of a sensor-controlled PESP feature requires that there be baseline data available from each of the controller variables representing a long-term average value for the cardiac performance index (CPI) and for the cardiac stress index (CSI). The baseline values will serve as reference values against which current, short-term samples of the variable can be checked. See col. 17, lines 34-38.

In short, the CSI variable may be used in conjunction with the CPI variable as a separate control variable but this does not equate to computing a product of the CSI and CPI variables and using the product to control the PESP stimulation.

Accordingly, Applicant respectfully requests the withdrawal of the rejection of claims 1-23 under 35 USC 103(a) as being unpatentable over Deno in view of Bennett.

III. Conclusion

In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration and prompt allowance of the application are respectfully requested.

The Examiner is invited to telephone the undersigned if the Examiner believes it would be useful to advance prosecution.

Respectfully submitted,

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Date

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